

**From:** [Erin Madden](#)  
**To:** [Lori Cora/R10/USEPA/US@EPA](#)  
**Cc:** [christopherburford@ctuir.com](#); [cunninghame@gorge.net](#); [wbarquin@hk-law.com](#); [lisa.bluelake@grandronde.org](#); [raygivens@givenslaw.com](#); [Katherine.pease@noaa.gov](#); [kurt.burkholder@doj.state.or.us](#); [rick.j.kepler@state.or.us](#); [jeremy\\_buck@fws.gov](#); [Chip\\_Humphrey/R10/USEPA/US@EPA](#); [Eric\\_Blischke/R10/USEPA/US@EPA](#)  
**Subject:** Re: Portland Harbor  
**Date:** 03/31/2008 12:14 PM

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Lori,

I just got a chance to review the memo. I have not yet had time to review the various legal documents, statutes, regs, etc that they cite. I would be interested in the state's perspective on lamprey status under state law before delving into any indepth research. I recall that the assessment of lamprey at the individual level appeared in an earlier document as well (work plan???), so had assumed that this issue had been agreed upon long ago. I was surprised to see this issue being raised now. I've asked for some technical insight from our consultants on this issue as well. Once I have a better handle on the technical implications, I can let you know if I'd like to schedule a conference call to discuss.

erin

Erin Madden  
Cascadia Law PC  
4803 SE Woodstock, #135  
Portland, OR 97206  
503-753-1310  
503-296-2973 FAX  
[erin.madden@gmail.com](mailto:erin.madden@gmail.com)

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On Mar 20, 2008, at 3:16 PM, [Cora.Lori@epamail.epa.gov](mailto:Cora.Lori@epamail.epa.gov) wrote:

Hello, LCT Folks. I am forwarding an email and memorandum send by Joan Snyder in which they argue that pacific lamprey should be not be assessed on the individual level in the ERA.

Kurt Burkholder: After you have time to look at this, I would like to talk about the lamprey's status under state law.

If any one has controverting legal analysis, please forward it on. My initial impression is that that EPA does not have a strong case for assessing pacific lamprey on an individual basis. Let me know if you would like to have a conference call.

Lori Houck Cora  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, ORC-158  
1200 Sixth Avenue  
Seattle, WA 98101  
(206) 553-1115  
[cora.lori@epa.gov](mailto:cora.lori@epa.gov)

----- Forwarded by Lori Cora/R10/USEPA/US on 03/20/2008 03:07 PM -----

"Snyder, Joan"  
<JPSNYDER@stoel.  
com>

To  
Lori Cora/R10/USEPA/US@EPA  
03/14/2008 03:24 PM CC  
<[agladstone@davisrothwell.com](mailto:agladstone@davisrothwell.com)>,  
"Albrich, Elaine"  
<[ERALBRICH@stoel.com](mailto:ERALBRICH@stoel.com)>,  
<[andy@geomega.com](mailto:andy@geomega.com)>,  
<[Chris.Reive@jordanschrader.com](mailto:Chris.Reive@jordanschrader.com)>,  
<[ckp@aterwynne.com](mailto:ckp@aterwynne.com)>,  
<[david.ashton@portofportland.com](mailto:david.ashton@portofportland.com)>  
,  
<[derrick.d.vallance@conocophillips.com](mailto:derrick.d.vallance@conocophillips.com)>,  
<[gerald.george@pillsburylaw.com](mailto:gerald.george@pillsburylaw.com)>,  
<[jbenedic@chbh.com](mailto:jbenedic@chbh.com)>,  
<[jbetz@ci.portland.or.us](mailto:jbetz@ci.portland.or.us)>,  
<[jkincaid@chbh.com](mailto:jkincaid@chbh.com)>,  
<[john.ashworth@bullivant.com](mailto:john.ashworth@bullivant.com)>,  
<[kims@tonkon.com](mailto:kims@tonkon.com)>,  
<[krista.koehl@portofportland.com](mailto:krista.koehl@portofportland.com)>  
, <[ldunn@riddellwilliams.com](mailto:ldunn@riddellwilliams.com)>,  
<[Lparetchan@perkinscoie.com](mailto:Lparetchan@perkinscoie.com)>,  
<[max@tonkon.com](mailto:max@tonkon.com)>,  
<[mwschneider@perkinscoie.com](mailto:mwschneider@perkinscoie.com)>,  
<[nklinger@ci.portland.or.us](mailto:nklinger@ci.portland.or.us)>,  
<[pdost@schwabe.com](mailto:pdost@schwabe.com)>, "Snyder,  
Joan" <[JPSNYDER@stoel.com](mailto:JPSNYDER@stoel.com)>,  
<[SZiegler@chevron.com](mailto:SZiegler@chevron.com)>,  
<[tgold@sjzlaw.com](mailto:tgold@sjzlaw.com)>,  
<[wearle@davisrothwell.com](mailto:wearle@davisrothwell.com)>,  
<[wjoyce@sjzlaw.com](mailto:wjoyce@sjzlaw.com)>

Subject

Portland Harbor

Hi Lori,

As I indicated in my voicemail message, the LWG Management Team wants to ensure that we do everything we can to prevent any log jams in the development of the RI/FS. One thing they have asked the LWG Legal Committee to do is to make sure that any legal issues are discussed with EPA as soon as they become apparent, so we can try to establish a common legal understanding of the issue. To make that happen, we asked the LWG Common Consultants to identify for us any technical issues they are dealing with that require resolution of some legal component.

The first one that has popped up is the issue of which species are assessed in the eco-risk assessment at the individual organism level. EPA's Problem Formulation document on the Baseline Ecological Risk Assessment identified three species, juvenile Chinook salmon, bald eagles and lamprey as "special status species" to be evaluated at the more conservative individual organism level. We agree that result may be appropriate for the Chinook and the bald eagles (at this time the bald eagle has been delisted federally, but still has "threatened" status under Oregon law). For the reasons discussed in the attached, it does not seem that would be the result under EPA guidance for lamprey, which previously was a candidate for ESA listing, but no longer is.

So, once you have a chance to look at this, could you please give me a call to talk about it? Thanks.

Joan P. Snyder  
Attorney, Environmental Practice Group  
STOEL RIVES LLP  
900 S.W. Fifth Avenue, Suite 2600  
Portland, OR 97204  
503-294-9657 (phone)  
503-220-2480 (fax)  
[jpsnyder@stoel.com](mailto:jpsnyder@stoel.com)

(See attached file: Lamprey memo.PDF)<Lamprey memo.PDF>